

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RAILCAR MANAGEMENT, LLC,

Plaintiff,

v.

CEDAR AI, INC.; MARIO PONTICELLO;  
DARIL VILHENA; and YI CHEN,

Defendants,

v.

WABTEC CORPORATION,

Third-Party Defendant.

C21-0437 TSZ

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) Plaintiff's motion, docket no. 211, for leave to file a fourth amended complaint, is GRANTED in part and DENIED in part, as follows:

(a) Plaintiff may electronically file, within seven (7) days of the date of this Minute Order, a fourth amended complaint adding a new claim for computer theft under the Georgia Computer Systems Protection Act (Ga. Code § 16-9-93) against only Cedar AI, Inc. ("Cedar"). For the same reasons that judgment on the pleadings was granted against plaintiff, see Order (docket no. 170), plaintiff may not bring such claim against any individual defendants, including Mario Ponticello, Daril Vilhena, and Yi Chen.

(b) Plaintiff's request to reassert an unjust enrichment claim that it previously voluntarily dismissed and substituted with a trespass to chattels claim, see Prop. 2d Am. Compl. (docket no. 92-2 at 21–22), is DENIED.

(c) To the extent that plaintiff's claim under Ga. Code § 16-9-93 is unsupported by evidence, Cedar may raise such defense in a motion for summary judgment. Cedar will be deemed to deny the claim, and it need not file an answer

1 to the fourth amended complaint unless it wishes to do so. Any such responsive  
 2 pleading shall be filed within twenty-one (21) days of the date that the fourth  
 amended complaint is filed.

3 (2) Defendants' motion to strike, docket no. 234, plaintiff's "corrected" Third  
 4 Amended Complaint, docket no. 210, is DENIED. To the extent that the "corrected"  
 5 Third Amended Complaint and any Fourth Amended Complaint are inconsistent with  
 6 earlier complaints, the previous pleadings may be used against plaintiff as evidence of an  
 7 admission or inconsistent statement. See MacNeil Auto. Prods. Ltd. v. Jinrong (SH)  
Auto. Accessory Dev. Co., No. C20-856, 2021 WL 3674792, at \*3 (W.D. Wash. Aug. 19,  
 8 2021) (citing Fed. R. Evid. 613 & 801(d)(2)); see also Avila v. Felder, No. 21-cv-1510,  
 9 2022 WL 542429, at \*3 (E.D. Cal. Feb. 23, 2022) ("The amendment of a pleading does  
 not make it any the less an admission of the party."). To the extent that the "corrected"  
 10 Third Amended Complaint exceeds the scope of the leave granted by the Court to  
 11 plaintiff to replead its claim under 18 U.S.C. § 1030(a)(5)(C), a provision of the  
 12 Counterfeit Access Device and Computer Fraud and Abuse Act of 1984 ("CFAA"), the  
 13 Court sua sponte grants plaintiff permission nunc pro tunc to add the factual allegations  
 14 unrelated to the CFAA claim.

15 (3) Defendants' motion to strike, docket no. 276, the materials filed along with  
 16 plaintiff's reply in support of its motion for leave to file a fourth amended complaint,  
 17 namely Exhibits A–M to the Declaration of Charles E. Harris, II, docket nos. 267-1  
 18 through 267-13, and Exhibits A–E to the Declaration of Andrew Parker, docket nos. 267-  
 14 through 267-18, is GRANTED. These documents shall remain under seal, and the  
 19 Court has not considered them in ruling on plaintiff's motion for leave to file a fourth  
 20 amended complaint. Plaintiff's reply, docket no. 267, which references or quotes from  
 21 these materials, shall also remain under seal.

22 (4) Defendants' related motion, docket no. 280, to seal some of the items  
 23 described in Paragraph 3, above, is STRICKEN as moot.

(5) The Clerk is directed to send a copy of this Minute Order to all counsel of  
 record.

Dated this 7th day of August, 2023.

Ravi Subramanian  
 Clerk

s/Laurie Cuaresma  
 Deputy Clerk